



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0004]

RIN 1625-AA08

Special Local Regulation; Macy's Fourth of July Fireworks Display Spectator Viewing Areas; Hudson River; New York, NY.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to establish a temporary special local regulation (SLR) on the navigable waters of the Hudson River in the vicinity of New York, NY for the Macy's Fourth of July Fireworks Display. The temporary SLR is intended to restrict certain vessels from portions of the Hudson River before, during, and immediately after the fireworks event. This regulation is necessary to provide for the safety of life on the navigable waters by controlling vessel movement and to establish public viewing areas for the fireworks event.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 45 DAYS AFTER**

**DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0004 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Ensign Kimberly Farnsworth, Coast Guard; telephone (718)354-4163, e-mail

Kimberly.A.Farnsworth@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0004), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received

at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2012-0004) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2012-0004) in the "SEARCH" box and click "SEARCH." Click

on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### Basis and Purpose

The legal basis for the proposed SLR is 33 U.S.C.

1233; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define special local regulations.

The proposed temporary SLR is necessary to ensure the safety of spectators and vessels from hazards associated with fireworks displays. Based on the inherent hazards associated with fireworks, the Captain of the Port (COTP) New York has determined that fireworks launches proximate to water crafts pose a significant risk to public safety and property. The combination of increased numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris, especially burning debris falling on passing or spectator vessels has the potential to result in serious injuries or fatalities. The proposed rule will temporarily establish regulated areas designated as spectator vessel viewing areas to restrict and control vessel movement around the location of the fireworks launch platforms to reduce the risk associated with the launch of fireworks.

#### Discussion of Proposed Rule

Macy's is sponsoring their annual Fourth of July Fireworks Display on the waters of the Hudson River in the vicinity of New York, NY. The fireworks display will occur

from approximately 9:20 p.m. until 9:50 p.m. on July 4, 2012. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, the proposed regulated areas will be enforced from 7 p.m. until 11 p.m. on July 4, 2012.

If the event is cancelled due to inclement weather, then the proposed regulated areas will be enforced from 7 p.m. until 11 p.m. on July 5, 2012.

The Coast Guard will activate a pre-established safety zone under 33 CFR 165.160 (USCG-2010-1001), around the fireworks launch platforms. The safety zone may be referred to as area CHARLIE, and its location is defined in entry 1.1 of Table 1 to 33 CFR 165.160. Only fireworks launch platforms and assist vessels will be allowed to enter into the safety zone.

To augment the existing safety zone around the fireworks launch barges, the COTP New York will establish four limited access areas within the boundaries of the special local regulation. Access to these areas will be restricted to vessels of a certain size. The four designated areas within the SLR are: (1) a "spectator area" designated ALPHA in which access is limited to vessels less

than 20 meters in length (65.6ft); (2) "spectator area" designated BRAVO in which access is limited to vessels greater than 20 meters in length (65.6ft); (3) "spectator area" designated DELTA in which access is limited to vessels greater than 20 meters in length (65.6ft); and (4) a "spectator area" designated ECHO in which access is limited to vessels less than 20 meters in length (65.6ft).

The geographic locations of regulated areas, and specific requirements of this rule are contained in the regulatory text. Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

#### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not



reviewed it under that Order.

This determination is based on the limited time that vessels will be restricted from the fireworks display area. The temporary special local regulation will only be in effect for approximately four hours during the evening hours. The Coast Guard does not expect significant adverse impact to mariners from the regulated areas, because the event has been extensively advertised in the public and affected mariners may request authorization from the COTP New York or the designated representative to transit the zone. Advance notification will be made to the maritime community via Broadcast Notice to Mariners and Local Notice to Mariners (LNM).

#### Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic

impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Hudson River, in the vicinity of New York, NY during the effective period.

The temporary special local regulation will not have significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only four hours on a single day during the late evening for this fireworks event. Although the regulation will apply to the entire width of the river, traffic will be allowed to pass through the area with the permission of the COTP New York or the designated representative. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications

for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the

Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action appears to be one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of a special local regulation to regulate vessel traffic on a portion of the Hudson River during the launching of fireworks. This rule appears to be categorically excluded, under figure 2-1, paragraphs and (34)(h), of the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATER**

1. The authority citation for part 100 continues to read

as follows:

Authority: 33 U.S.C. 1233.

2. Add §100.35T01-0004 to read as follows:

§100.35T01-0004 Macy's Fourth of July Fireworks Display  
Spectator Viewing Areas; Hudson River; New York, NY.

(a) Regulated area. The regulated area includes all navigable waters of the Hudson River bounded by a line drawn from the northern most break-wall of the 79<sup>th</sup> Street Boat Basin, New York, NY, approximate position 40°47'11.70"N, 073°59'8.83"W, then west to a point on the shoreline of Guttenberg, NJ, approximate position 40°47'28.27"N, 073°59'46.39"W, then south along the New Jersey shoreline to a point in the vicinity of Port Imperial, Weehawken, NJ approximate position 40°46'35.43"N, 074°00'37.53"W, then east to a point in the vicinity of Pier 99, New York, NY approximate position 40°46'16.98"N, 073°59'52.34"W, then along the Manhattan shoreline north to the point of origin and all navigable waters of the Hudson River bounded by a line drawn from Maxwell Park, Hoboken, NJ, approximate location 40°44'55.90"N, 074°01'24.94"W, east to Chelsea Piers, New York, NY approximate location 40°44'48.97"N, 074°00'41.01"W,, south along the Manhattan shore line to Pier 40 approximate location 40°43'46.43"N, 074°00'50.95"W, and west to Hoboken/New Jersey Transit



Station, Hoboken, NJ approximate location 40°43'50.38"N, 074°01'41.68"W, and then north to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83). Within the overall regulated area defined in this paragraph (a), the following are individually defined areas subject to specific requirements:

(1) Area ALPHA: all navigable waters of the Hudson River north of a line drawn from a point in the vicinity of Riverwalk Place, Weehawken, NJ, approximate position 40° 46'50.85"N, 074° 00'19.52"W, east to a point in the vicinity of 64<sup>th</sup> Street, New York, NY, approximate position 40° 46'34.38"N, 073° 59'30.98"W, and south of a line drawn from the shoreline of Guttenberg, NJ, approximate position 40°47'28.27"N, 073°59'46.39"W, east to the northern most break-wall of the 79<sup>th</sup> Street Boat Basin, New York, NY, approximate position 40°47'11.70"N, 073°59'8.83"W. (NAD 83).

(2) Area BRAVO: all navigable waters of the Hudson River north of a line drawn from the ferry terminal at Port Imperial, Weehawken, NJ, approximate position 40° 46'35.43"N 074° 00'37.53"W, east to a point in the vicinity of Pier 99, New York, NY, approximate position 40° 46'16.98"N, 073° 59'52.34"W, and south of a line drawn from Riverwalk Place, Weehawken, NJ, approximate position 40° 46'51.01"N, 074°

00'19.52"W, east to a point in the vicinity of 64<sup>th</sup> Street, New York, NY, approximate position 40° 46'34.38"N, 073° 59'30.98"W. (NAD 83).

(3) Area DELTA: All navigable waters of the Hudson River north of a line drawn a point in the vicinity of Pier C Park, Hoboken, NJ, in approximate position 40° 44'24.32"N, 074° 01'32.98"W, east to Gansevoort Street, New York, NY, approximate position 40° 44'20.46"N, 074° 00'37.28"W, and south of a line drawn from in the vicinity of Chelsea Piers, approximate position 40° 44'48.98"N 074° 00'41.06"W, then west to a point in near Maxwell Park, Hoboken, NJ, in approximate position 40° 44'55.91"N 074° 01'24.94"W. (NAD 83).

(4) Area ECHO: All navigable waters of the Hudson River north of a line drawn Hoboken/New Jersey Transit Station approximate position 40° 43'50.38"N, 074°01'41.68"W in Hoboken, NJ, east to Pier 40, New York, NY in approximate position 40° 43'46.43"N, 074° 00'50.95"W, and south of a line drawn from Pier C Park, Hoboken, NJ, in approximate position 40° 44'24.32"N, 074° 01'32.98"W, east to Gansevoort Street, New York, NY, approximate position 40° 44'20.46"N, 074° 00'37.28"W. (NAD 83).

(b) Definitions. For purposes of this section "Designated representative" is any Coast Guard

commissioned, warrant, or petty officer who has been designated by the Captain of the Port New York (COTP) to act on the COTP's behalf.

(c) Special local regulations. (1) In accordance with the general regulations in section 100.35 of this part, entry into, transiting, or anchoring within the regulated areas is prohibited, unless authorized by the COTP or the designated representative.

(2) Vessels are authorized by the COTP or the designated representative to enter areas of this special location regulation in accordance with the following restrictions:

(i): Area ALPHA access is limited to vessels less than 20 meters (65.6ft) in length.

(ii) Area BRAVO access is limited to vessels greater than 20 meters (65.6ft) in length.

(iii) Area DELTA access is limited to vessels greater than 20 meters (65.6ft) in length.

(iv) Area ECHO access is limited to vessels less than 20 meters (65.6ft) in length.

(3) All persons and vessels in the regulated areas shall comply with the instructions of the COTP or the designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed. The COTP or the designated representative can be reached on VHF channel 16.

(d) Effective period. This rule will be effective from 7 p.m. to 11 p.m. on July 4, 2012. If the fireworks display is postponed, this section will be effective from 7 p.m. until 11 p.m. on July 5, 2012.

Dated: February 27, 2012

G. P. Hitchen,  
Captain, U.S. Coast Guard  
Acting Captain of the Port New York

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